

**BEYOND CRISIS: CONTEXTUALIZING EMERGENCY PROVISIONS OF INDIAN
CONSTITUTION FROM ORIGIN TO REFORM**

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ABSTRACT:

This article delves into the emergency provisions outlined in the Indian Constitution, examining their types, consequences, and instances of abuse. It starts by defining emergency and explores the rationale behind incorporating such provisions. The three types of emergencies - National, State, and Financial - are discussed in detail, along with the procedures for their declaration, parliamentary approval, and revocation. The impacts of each type of emergency on various facets of governance, including executive, legislative, and judiciary, are analyzed. The abuse of emergency powers, particularly during the infamous Emergency of 1975-1977, highlighted its detrimental effects on democracy, fundamental rights, and press freedom. Instances of executive overreach, political vendetta, and suppression of dissent during the imposition of the President's Rule are scrutinized. Moreover, the perspective of judicial review is examined, emphasizing the crucial role of the judiciary in upholding constitutional principles and protecting individual rights. A comprehensive examination of historical events and constitutional provisions provides insights into the delicate balance between emergency powers and democratic governance, underscoring the need for vigilance and accountability to prevent their misuse in the future.

Keywords:- Emergency, President's Rule, Article 352, Judiciary, Judicial review, 44th Amendment,

INTRODUCTION

"I do not believe that a democratic society has the obligation to acquiesce in its own dissolution"

- Jayprakash Narayan, August 9, 1975

INDIA, a nation inhabited by seven hundred million individuals, firmly grounded in the principles of diversity, inclusivity, and acceptance, as well as decentralization wherever possible, has its own brighter and darker side. Democracy is at the heart of its governance. India's democratic system has been in operation for over 75 years, a significant period for assessing its functionality. As the world's most populous democracy, India's position in terms of merit warrants careful examination and analysis. India's democracy has completed more than 75 years which is sufficient to evaluate the working of any system. India is the largest democracy in the world, in terms of population, but it is a matter of analysis where India stands in terms of merit.

Indian democracy has been successful regarding freedom of expression and association. It reflects on the numerous challenges facing parliamentary democracy in India while offering fresh perspectives on how democracy has operated. Additionally, it sheds light on the strengths and weaknesses inherent in the democratic system. And all of this can never be possible in a country if it lacks a constitution that grows and evolves with the lives of its diverse people over time. The Indian constitution has passed the test of time with its commitment to establish India as a sovereign, socialist, secular, democratic, and republican nation with an independent judiciary, ensuring the protection of Fundamental Rights integral to the governance of the country.

However, in its workings, our constitution has revealed several inadequacies. The chain of accountability from the civil service to the legislature and political authority is weak, a poor higher level of administration and limited oversight by Parliamentary committees are part of the problem. Whereas Good governance is linked with responsible political leadership, informed policy formulation, and a civil service characterized by professionalism and integrity. And over the time there have been many incidents where democracy was brought to a grinding halt and even our fundamental rights and legal remedies were suspended. The Indian Emergency, initiated by Prime Minister Indira Gandhi (or by Fakhruddin Ali Ahmed, President of India, at her behest) on June 25,

1975, and extending until March 21, 1977, characterized a phase of autocratic rule in India. Throughout this period, strict press censorship was imposed, judicial proceedings and democratic liberties like the right to assemble were suspended, and opposition figures were subjected to arrests. Electoral processes were deferred, and constitutional amendments were implemented, resulting in an unparalleled upheaval of democratic conventions.

In this article, "Beyond Crisis: Exploring Emergency Provisions from Origin to Reform" we will learn all about the emergency provision, what makes this clause so special, why it is proclaimed, and how it is proclaimed. We will be analyzing the past proclaimed emergency, one of the most controversial periods in the political history of independent India, when the country witnessed the temporary demise of democracy. In the words of the Supreme Court, "civil liberties were withdrawn to a great extent; important fundamental rights of the people were suspended; strict censorship on the press was placed; and judicial powers were crippled to a large extent."

EMERGENCY PROVISION IN THE CONSTITUTION

According to the black law dictionary, EMERGENCY ("□□□□□□ ") means "a situation requiring immediate attention and remedial action; Involves injury, loss of life, damage to property, or catastrophic interference with normal activities; A sudden, unexpected, or impending situation."

The Indian Constitution provides a comprehensive framework delineating the government's structure, citizens' fundamental rights and duties, and special provisions. Initially composed of 395 Articles upon its enactment on January 26, 1950, it serves as the bedrock of Indian governance. The emergency provisions, encapsulated in Part XVIII of the Constitution from Article 352 to 360, empower the central government to effectively address extraordinary circumstances. Their inclusion aims to safeguard the nation's sovereignty, unity, integrity, and security, as well as uphold the democratic political system and the Constitution. The Constitution delineates three types of emergencies, proclaimed as per the exigencies of the situation, while Part XVIII also encompasses special provisions pertaining to certain classes.

Declaring an emergency is a very controversial topic that is a direct assault on people's freedom and therefore, it must be declared under very extraordinary situations. In accordance with Article 352(1), a President can proclaim an emergency, if he is satisfied that the security and public order concerned in any part of India . And here comes the real problem also, whether the problem under the consideration of the president's satisfaction is justifiable or not?

During the making of the constitution also, there were lots of debates over the concession of emergency powers and many of the members of the constituent assembly were not happy at the inclusion of the emergency provision, including Dr. Ambedkar, in his capacity as the chairman of the drafting committee, found himself obligated to support the inclusion of emergency provisions in the Constitution. However, he expressed a sincere hope that such articles would remain dormant and never need to be invoked. He emphasized the importance of exercising such powers sparingly, suggesting that they should only be utilized in the event of a breakdown in constitutional machinery within a state . Dr. Ambedkar was inherently committed to democratic principles and the rule of law. He firmly believed in the importance of fair play in democracy. Consequently, he cautioned against the misuse of emergency powers by the Union Government for political gain, underscoring his dedication to democratic ideals. Unfortunately, Dr. Ambedkar's hopes were shattered as successive political parties in power at the Centre resorted to blatant misuse of these provisions. The history of Indian politics is marred by instances of the egregious abuse of emergency powers, an undeniably shameful reality.

TYPES OF EMERGENCIES:

Article 352 to Article 360 of the Indian Constitution enable the Central government to proclaim emergency: -

- National emergency (Article 352)

- State emergency (Article 356)
- Financial emergency (Article 360)

NATIONAL EMERGENCY:

Article 352 mentions a national emergency. A national emergency can be declared when the security of India or any part of the territory thereof is threatened by the preceding conditions: -

- i) 'War' or 'external aggression'
- (ii) 'External Emergency' Or
- iii) 'Armed rebellion'

The term "Armed rebellion" was introduced through the 44th Amendment to the Indian Constitution. Before this amendment, the term used to describe such situations was "Internal disturbance."

According to Article 352, if the President is 'convinced' that a severe emergency exists, endangering India's security or any part of its territory due to war, external aggression, or armed rebellion, they may declare such a state for the entirety of India or specific regions. This declaration must be ratified by the legislature, or it will expire within a month from its issuance.

PARLIAMENTARY APPROVAL AND PROCLAMATION:

- Approval from both houses of Parliament is required within one month of issuing the emergency proclamation.
- If the Lok Sabha is dissolved or dissolved during this period without approval, the proclamation remains valid until 30 days after the reconstitution of the Lok Sabha, given that the Rajya Sabha has approved it.
- Once approved by both houses, the emergency continues for six months initially and can be extended indefinitely with Parliament's approval every six months.
- Resolutions approving the emergency proclamation or its extension must be passed by either house of Parliament with a special majority.

CONSEQUENCE OF NATIONAL EMERGENCY:

The declaration of an Emergency has significant and far-reaching impacts on the political landscape. These effects can be categorized into three main areas: -

RELATIONSHIP BETWEEN THE CENTRE AND THE STATE GOVERNMENTS:

During an Emergency, there is a fundamental shift in the dynamics of Centre-State relations, leading to alterations in several aspects. This can be studied under three heads:

Executive - The major change is that the constitution's federalism becomes unitary and therefore the center becomes authoritative and entitled to give executive direction to "any" state in "any" matter.

Legislature- Parliament assumes authority, except in the fields alluded to in the State List, to make legislation for the whole country or part thereof. But the president can issue ordinances on State subjects also if the parliament is not in session, the laws made on the state subjects by the center became inoperative after six months when the emergency ceased to be in operation.

Financial - The President is allowed during an emergency to change the laws and modify the allocation between the Union and the States of wealth.

EFFECTS ON LOK SABHA AND STATE ASSEMBLY: -

During the emergency, the tenure of the Lok Sabha can be prolonged for 1 year beyond the normal term. However, the same couldn't be expanded beyond 6 months after the expiration of the emergency. In the same manner, the tenure of state assembly can be prolonged.

EFFECTS ON THE FUNDAMENTAL RIGHTS :

Effects of national emergency are described under the Articles 358 and 359. The explanation of the articles is as: -

According to Article 358, when a national emergency is declared, all the human rights under the article shall immediately be revoked and are automatically revived after the expiry of the emergency. However, according to the 44th Amendment, in which it laid out that Article 19 can be revoked only when the National Emergency is laid out on two of the three grounds which are 'external aggression' and 'war', not on the third ground is 'armed rebellion'. And any other right mentioned in part III of the constitution may get suspended by the union - that may contain:

- freedom to assemble peacefully;
- freedom of equality before the law;
- freedom for movement across Indian territory;
- freedom to practice or propagate religion;
- freedom of speech and expression;
- freedom to practice any profession, occupation, trade, or business.

Under Article 359, the president is authorized to suspend, by order, to appeal the infringement of the privileges alluded to above, during the National Emergency. Thus, the right to constitutional remedies is suspended.

The suspension of the right will be during the emergency period or for a shorter period. The order should be laid before each house of the parliament for approval. The 44th Amendment Act stipulates that the President is prohibited from suspending the right to seek legal recourse for the enforcement of Articles 20 and 21 of the Constitution. These articles pertain to individual liberty, the right to privacy, protection against double jeopardy, and safeguarding from unlawful prosecution (excluding detention). If any rights within these categories are unjustly suspended during an emergency, individuals have the right to appeal to a court of law for their restoration.

REVOCATION OF EMERGENCY:

- The President can revoke a proclamation of Emergency at any time through a subsequent proclamation, without needing parliamentary approval.
- If the Lok Sabha passes a resolution disapproving of the continuation of the emergency by a simple majority, it must be revoked.
- According to the 44th constitutional amendment, if ten percent or more Lok Sabha members submit an application during a session expressing disagreement with the emergency, it can be canceled with a simple majority vote during the Lok Sabha meeting.

NATIONAL EMERGENCY IN INDIA:

National emergency was declared thrice in India in 1962 (Indo-China war), 1971 (Indo-Pakistan war), and 1975 to 1977 (declared by Indira Gandhi on account of "internal disturbance").

For the first time during the Indo-China war from 26th October 1962 to 10th January 1968. It was declared by Pt. Jawaharlal Nehru when the Indo-China war broke out. Even though the ceasefire was declared a month later, the emergency wasn't revoked.

It was still in force when the Indo-Pak war broke out in 1965. In the end, hostilities ended with the Tashkent agreement being signed on 11th January 1966, still the emergency was lifted on 10th Jan 1968.

The second emergency was declared by then PM Indira Gandhi on 3rd Dec 1971, when the Bangladesh liberation war broke out. The war with Pakistan ended within 2 weeks, on 17th Dec, 1971, but the emergency persisted and before its revocation, the third emergency was declared.

With the 2nd emergency still in force, PM Indira Gandhi declared the 3rd emergency on 25th June 1975. One of the most contentious emergencies was proclaimed due to internal disturbance. Her election in 1971 had been challenged in the Supreme Court and all the evidence seemed to be turning against her. And on the previous day i.e, 24th June, Justice Sinha held her guilty of two corrupt practices in the election. The first was that she had used an officer on special duty in the prime minister's secretariat to "further her election prospects", which should not have been put to such use

as he was a government servant at that time. The second malpractice was that she had obtained the assistance of UP's officials to build rostrums from which she addressed her election rallies, even though they arranged for loudspeakers and electricity to feed them.

Raj Narain, one who contested the election from the Rae Bareilly constituency against her, sought this case. Although he had lost the election by a considerable margin of over 100,000 votes, the malpractices observed wouldn't have significantly altered the outcome. They were too minor to justify removing a Prime Minister from office. It seemed akin to removing the Prime Minister over a trivial traffic violation.

However, the law was explicit, stating that soliciting assistance from government officials to enhance a candidate's electoral prospects constituted corrupt practice. Hence the SC was left with no choice but to declare the election void and she would have to step down as PM. And for Madam Indira Gandhi, to protect her position, she was left with one choice which is a declaration of emergency. This emergency lasted for 21 months from 1975 to 1977. And proclamations of both the emergency of 1971 and 1975 were revoked in 1977.

STATE EMERGENCY:

India stands as the largest federal republic globally, accommodating 1.4 billion citizens across 28 states and 8 union territories. The potential for the central government to encroach upon the authority of states emerges due to the constitutional framework establishing two tiers of governance—union and state—each endowed with powers to be wielded within its defined sphere. Article 356 empowers the union cabinet to assume control of a state's administration when it fails to fulfill its obligations "in accordance with the provisions of this constitution."

Under Article 355, it's the duty of the center to protect the state from three things –

- External aggression
- Internal disturbance
- Respecting the constitutional process

The origin of Article 356 can be partially traced back to the colonial state's Government of India Act of 1935. After the departure of the Muslim League from the Constituent Assembly when a bloody and violent partition was underway, India's leaders were afraid of potential secession, untamed violent ethnic conflict, and communist revolutions in certain states. The constitution framers decided that the power to intervene when there was a breakdown of law and order, or constitutional governance, would lie with the union government (specifically the cabinet) and not with the state chief minister.

Article 356 of the Constitution states that if the President, upon receiving information from the Governor of a State or otherwise, concludes that a State government is incapable of functioning effectively and there is an imminent risk of widespread or severe damage, injury, or loss of life or property due to a natural or man-made disaster, the President is empowered to declare a state of emergency in that State in accordance with the constitutional provisions.

State emergency is also popularly known as the President's Rule.

PARLIAMENTARY APPROVAL AND PROCLAMATION:

Article 356 can be invoked under three conditions: (1) to address an emergency as outlined in the constitution, (2) as a pretext to enhance the central government's authority, or (3) to diminish state government power without any emergency pretext. Understanding the decline in the use of Article 356 since the 1990s requires insight into the procedural aspects and the motivations of various actors at the union and state levels involved in its invocation. The process commences with the governor of a state submitting a report to the union cabinet, explaining the state government's inability to function within constitutional bounds. If the union cabinet agrees with the governor's assessment and advises the president to enact Article 356 in the state, the president has discretionary authority to do

so. However, the Constitution does not explicitly define what constitutes a breakdown of constitutional machinery or a constitutional emergency.

The Sarkaria Commission, commissioned by the Government of India in 1988 to examine federalism and investigate the misuse of the president's rule for political gains, provided a set of guidelines. These guidelines, though non-exhaustive, include scenarios such as political crises or deadlocks where no party can form a coalition government. Additionally, they cover instances of internal subversion, ranging from disregarding constitutional norms to plotting violent revolution with a foreign entity. The list also encompasses breakdowns where the state government fails to maintain law and order during communal riots, secessions, or natural calamities, as well as instances of noncompliance with the directives of the central government by state authorities.

CONSEQUENCE OF STATE EMERGENCY:

When the President's rule is imposed in a state, the President assumes extraordinary powers to oversee governance. Firstly, all functions of the state government are taken over by the President, with the Governor administering the state in the President's name. Secondly, Parliament exercises full authority over the state legislature, including legislation on the 66 subjects listed in the state list. Thirdly, approval from Parliament becomes mandatory for all money bills, ensuring fiscal accountability. Lastly, the President can enact necessary measures, including the suspension of constitutional provisions concerning any state body or authority, to address prevailing circumstances effectively. These provisions collectively empower the central government to maintain stability and ensure governance continuity during periods of uncertainty or crisis within a state.

REVOCATION OF STATE EMERGENCY

If the President wants to revoke the emergency, he can, without the permission of anybody, at any time.

The proclamation of state emergency made in compliance with article 356(1) can expire under the following conditions: -

1. If both houses of the parliament hadn't accepted it within two months of its creation [Article 356(3)].
2. If it fails to gain the consent of either of the Houses of Parliament [Article 356(3)].
3. If no other proposal is adopted by the parliament, following the adoption of the first proposal [Article 356(4)], six months from the date of the declaration.

Any of the conditions above mentioned can automatically lead to revocation of the state emergency. Subject to the overall maximum limit of three years from the date of the declaration. Numerous procedural safeguards are in place concerning Article 356. Initially, a proclamation issued under this article remains valid for only two months unless Parliament approves it. Once approved, it can be extended for up to six months (as per Articles 356[3] and 356[4]). However, extensions beyond one year are prohibited unless there is a national-security emergency, and the Election Commission certifies that holding state assembly elections is challenging (according to Articles 356[5] and 356[6]). Additionally, proclamations under Article 356 cannot surpass three years, except in the case of Punjab.

FINANCIAL EMERGENCY

The financial emergency under Article 360, is the third kind of emergency. It empowers the president to proclaim a financial emergency if he is satisfied that India or any of its economic stability or credibility is at risk.

PARLIAMENTARY APPROVAL AND PROCLAMATION

The proclamation for Financial Emergency must receive approval from both houses of Parliament within two months of its issuance.

If the Lok Sabha is dissolved or dissolution occurs during this period without approval, the proclamation remains in effect until 30 days after the Lok Sabha's reconstitution, provided the Rajya Sabha has given its approval. After obtaining approval from both houses of Parliament, the Financial Emergency can be enforced and later revoked through a corresponding declaration.

CONSEQUENCE OF FINANCIAL EMERGENCY

- Expansion of executive authority by the Union government over the financial affairs of the states.
- Authority to decrease salaries and allowances for all or specific groups of individuals employed by the state.
- Requirement for all money bills or other financial bills passed by the state legislature to be reserved for the President's consideration.
- Authorization for the President to issue directives to personnel within the national government, including Supreme Court judges and High Court judges, to reduce their salaries and compensation.

ABUSE OF EMERGENCY POWERS AND ITS IMPACTS : NATIONAL EMERGENCY

Onslaught throughout 1975-1977

The shadiest period in the modern history of India can indeed be recalled as starting when the President of India, Mr. Fakhruddin Ali Ahmed upon serious pressure from Prime Minister Mrs. Indira Gandhi, declared a state of emergency. From this moment, the largest and proudest democracy in the world was reduced to a tin-pot dictatorship.

A widespread discontent shook India: large sections of the people came out in demonstration against rising prices, fall in the supply of essential commodities, unemployment, and most importantly corruption in the government administration. Civil liberties guaranteed by the Constitution, including freedoms of expression and association and the right of habeas corpus, that is, the right to appeal to the courts against arbitrary arrest, were suspended. Unprecedented and draconian censorship was imposed on the Press. The radio and TV were used exclusively to propagate the government's viewpoint. 'By this means the government converted a hitherto "transparent" society into an opaque one.

Executive control over the judiciary

The announcement of the emergency on June 26, 1975, was an attempt to decimate Indian democracy. While a large section of the Indian judiciary decided to resist the onslaught on democratic institutions like the press and judiciary, a segment of the Supreme Court gave up.

A major example of this can be seen when the unanimous verdict of nine high courts relating to Habeas corpus that Article 21 is not the sole repository of life and liberty and that a prisoner has the privilege of Habeas corpus during the emergency was turned around by a 4:1 decision of the Supreme Court . We can say that when the high court was showing fortitude. On the other hand, the Supreme Court showed subservience .

Another event occurred when Justice Sinha ruled that Mrs. Gandhi had been guilty of corrupt practices, voided her election, and barred her from standing for office for six years, Mrs. Gandhi bypassed her cabinet and secured a declaration of emergency.

During the emergency, approximately 111,000 people were detained. Although the Bangalore High Court voided detention orders as invalid in July 1975, in April 1976, a bench of the Supreme Court reversed that judgment, concluding that no court had jurisdiction to review the factual or legal sufficiency of detention orders.

These are some of the examples from the plethora of such events.

Executive Playing Legislature

With the implementation of the emergency, the fundamental rights of the citizens, notably the "right to freedom of speech and expression", " right to assembly peacefully without arms ", and "right to form association or unions" are guaranteed by Article 19 . All these activities were defined in such a

way as to include them under “Anti-national activities” which are prohibited under the 42nd Constitutional amendments .The President is empowered under Article 359 of the constitution to make an order suspending the right to move any court for the enforcement of any civil liberties as such during the proclamation of the emergency.

The government kept reinforcing the already powerful judicial arsenal it had at its disposal in the matter of preventive detention . Its main batteries were the Defense of India Act and the Maintenance of Internal Security Act (MISA), 1971 , a preventive detention law that had been enacted by the Parliament as a permanent statute earlier in the same year . The latter was a controversial law passed by the Indian parliament in 1971 giving the administration of Prime Minister Indira Gandhi and Indian law enforcement agencies superpowers - indefinite "preventive" detention of individuals, search and seizure of property without warrants, and wiretapping - in the quelling of civil and political disorder in India, as well as countering foreign inspired sabotage, terrorism, subterfuge and threats to national security.

Press Censorship

The 1975 emergency was a watershed in the country and it touched the press as well. The Emergency of 1975 in India had a profound impact on the press. During this period, fundamental rights were suspended, and the government imposed strict censorship on the media . Journalists faced harassment, imprisonment, and closure if they criticized the government or reported on dissenting voices.

The media became a tool for government propaganda, suppressing objective reporting and promoting a positive image of the ruling party. Fear and self-censorship pervaded the industry, leading to a decline in robust and critical journalism. The news was molded purely to serve the party in power and its leader and the Ministry of Information and Broadcasting became a virtual caricature of the Hitlerian German Information Minister Dr. Goebbels set up.

Press freedom remains a vital issue, and the legacy of the Emergency continues to shape conversations about journalistic integrity and the role of the media in Indian democracy.

STATE EMERGENCY

The President's Rule (imposition of Article 356) has not remained a dead letter. Between 1952 and 2019, it has been used 123 times to impose direct union cabinet rule in various states. Of the 28 states, only 2 (relatively recently formed) states have never experienced president’s rule, and some states have experienced it for years on end .

Political Vendetta: The central government has been accused of misusing Article 356 to target state governments led by opposition parties. It has been alleged that the central government sometimes imposed the President's Rule as a means to destabilize opposition-ruled states and to gain political advantage.

Dissolution of State Assemblies: In some cases, state assemblies have been dissolved by the central government without giving enough time for the formation of an alternative government. This has been seen as an infringement on the democratic rights of the people who elected their representatives.

Misusing Governor's Discretion: The Governor, who acts as the President's representative in the state, is expected to act in a non-partisan manner. However, there have been instances where Governors, allegedly influenced by the central government, have recommended the President's Rule without fully exploring other options to resolve political crises in the state.

Prolonged Impositions: The President's Rule, which is initially intended to be a temporary measure, has sometimes been extended for prolonged periods, leading to concerns about the erosion of democratic processes in the affected states. Suppression of Political Dissent: During the President's Rule, the powers of the elected state government are suspended, and the central government

exercises direct control. This has led to allegations of suppressing political dissent and curbing the voices of opposition leaders and activists.

Bypassing Federal Principles: Critics argue that the frequent use of Article 356 undermines the federal structure of the Indian Constitution, which envisions a clear division of powers between the central and state governments.

Central Interference in State Affairs: The central government, while controlling the state administration during the President's Rule, can influence policy decisions and allocation of resources, which some view as interference in the state's affairs.

PERSPECTIVE OF JUDICIAL REVIEW :

Literally, the notion of Judicial Review is defined as the court's power to review the actions of other branches of government, especially the court's power to invalidate legislative and executive actions as being unconstitutional. Judicial review is the power of the courts to check the constitutionality of any legislative and executive or administrative actions of the union and the state governments. Judicial review in this case means that Courts of law have the power to test the validity of legislative as well as other governmental action concerning the provisions of the Constitution. The doctrine of Judicial review has been originated and developed by the American Supreme Court .

Under the constitution of India, parliament is not supreme. The final interpreter of the Indian Constitution is the Supreme Court. As of today, the Indian Supreme Court is acknowledged as the most powerful Constitutional Court. Its power flows from the instrumentality of Judicial Review. It is a power meant to be used. Not to be abused. Courts and judges are not engines of power. They are engines of Justice. They are social engineers. They remove injustices.

The country experienced a series of events where the Supreme Court's rulings were followed by legislative actions to nullify them, only to be followed by subsequent court decisions reaffirming the original stance. This ongoing struggle between the branches of government extended to issues like constitutional amendments. Despite efforts by the legislature to enact people-centric socialist measures, conflicts arose with fundamental rights, leading the Supreme Court to prioritize individual rights protection.

After the period of emergency, the judiciary was on the receiving end of a series of judgments that were perceived by many as being violative of the basic human rights of Indian citizens and changed the way it looked at the Constitution. The Supreme Court said that any legislation is amenable to judicial review, be it momentous amendments to the Constitution or drawing up of schemes and bye-laws of municipal bodies that affect the life of a citizen. The judicial review extends to every governmental or executive action - from high policy matters like the President's power to issue a proclamation on the failure of constitutional machinery in the States like in the Bommai case to the highly discretionary exercise of the prerogative of pardon like in Kehar Singh case or the right to go abroad as in Satwant Singh case . Judicial review knows no bounds except the restraint of the judges themselves regarding the justifiability of an issue in a particular case.

Article 356, which deals with the President's power in states, allows for scrutiny by the judiciary if the exercise of power is deemed oppressive. However, debates center on the extent and depth of judicial review in such cases.

At this stage let us discuss some of the leading judgments on this issue of Judicial Review of Presidential Proclamation:

In *Bhuvan Nath v. State of West Bengal* , the Supreme Court refused to hold the continuation of emergency under Art. 352 void and stated that the question involved here is – “a political, not justiciable issue and the appeals should be to the polls and not to the courts.” Also In the case of *K.K. Aboo v. Union of India* , High Court of Kerala held that the President had ample material for his satisfaction before declaring an emergency and it is not open to the Courts to question the validity of the proclamation under Art. 352. There were a series of cases before and after this which pertained to similar issues and had the same judgments. It was also found to be a common belief that since the

President is not amenable to any of the courts and is guaranteed immunity by the Constitution of India.

But, then a change in decisions started and:

In *Minerva Mills Ltd. v. Union of India* Justice P.N. Bhagwati expressed his view that wherever the President while proclaiming the emergency had applied his mind or whether he had acted outside his powers, the Emergency could not be excluded from the scope of Judicial Review.

In *S.R. Bommai v. The Union of India* view of the High Courts about judicial review was that there could be no judicial review of the Presidential Proclamation. But then the Supreme Court held that the judicial review was possible and the validity of the proclamation issued can be reviewed. This further gave strength to the observation laid down in *Minerva Mills Ltd. v. Union of India*. All the judges agreed that a Proclamation issued under Art. 352 is not completely beyond Judicial Review and mala fides provide a ground for Judicial Interference.

It was held in *S.R. Bommai* that Article 356 Clause 1 is not immune from judicial review. Courts can strike down the proclamation if it is found to be malafide or based on totally irrelevant or extraneous grounds.

As Soli Sorabjee points out, "There is genuine concern about misuse by the Centre of Article 356 on the pretext that the State Government is acting in defiance of the essential features of the Constitution. The real safeguard will be full judicial review extending to an inquiry into the truth and correctness of the basic facts relied upon in support of the action under Article 356 as indicated by Justices Sawant and Kuldeep Singh. If in certain cases that entails evaluating the sufficiency of the material, so be it."

What this meant was the judiciary was being cautious about the role it has to play while adjudicating matters of such importance and it is showing a path of restraint that has to be used while deciding such matters so that it does not usurp the powers given by the Constitution by way of the power of review at the same it is also minimizing the misusing of the power given under Article 356 to the President.

CHANGES MADE BY 44TH AMENDMENT:

"Unlike in 1975, it is no longer possible for the Prime Minister to unilaterally take a decision about the Proclamation of an emergency without any written explanation and transparency."

ORIGIN AND BACKGROUND:

After the period of emergency, the judiciary was on the receiving end of a series of judgments that were perceived by many as being violative of the basic human rights of Indian citizens and changed the way it looked at the constitution. The national emergency in India was proclaimed under Article 352 of the Indian Constitution. Article 352 of the Constitution, prior to the 44th Amendment Act, laid that the president of the nation could proclaim an Emergency if she/he was satisfied of the persistence of a grave threat to the security of the whole of India or a territory of India, either by war, external aggression or internal disturbances.

As per Article 352, the proclamation was issued by the President after a decision about the same was taken by the Prime Minister Indira Gandhi and communicated to the president without consultation with her cabinet. Certainly, a day later the cabinet Minister of Indira Gandhi had ratified this decision. The proclamation was passed by both the houses of the parliament by a simple majority. As per the earlier provision, the emergency could continue for as long as there was no fresh decision of the parliament.

THE FORTY- FOURTH AMENDMENT

Article 352, prior to the 44th Amendment, was rather vague and arbitrary. It concentrated too much power in the hands of the Prime Minister and cabinet. Thus, when the Janata Dal Alliance came in power, they decided to enact the 44th amendments to modify Article 352 in order to make it more

transparent and increase the accountability of the ruling government during a national emergency under the Constitution.

Under Article 352 of the Constitution, the President can only declare an emergency upon confirmation from the Prime Minister and Cabinet, submitted in writing. Article 74 allows the President to return the declaration to the Prime Minister and Cabinet, but if resent, the President must declare the emergency. Unlike in 1975, it is no longer possible for the Prime Minister to unilaterally take a decision about the Proclamation of an emergency without any written explanation and transparency .

Similarly, a simple majority of the Parliament is no longer sufficient for the proclamation of Emergency. After the 44th Amendment, a special majority is needed for an emergency proclamation. Both houses of Parliament must approve it by a two-thirds majority of members present and voting. Previously, if not approved within two months, it ceased; now, it's reduced to one month.

In 1975, there was no provision for periodic review of emergency proclamations after passage by Parliament. However, the 44th Amendment Act mandated a six-month review, and without renewed approval, the emergency would be suspended. The amendment also allowed 10% or more Lok Sabha members to requisition a meeting within 14 days to consider a bill disapproving the proclamation. If the meeting passes the bill by a simple majority, the emergency is revoked.

SIGNIFICANT JUDICIAL DECISIONS DURING EMERGENCY PERIOD:

ADM Jabalpur v. Shivkant Shukla (1976):

Also known as the “Habeas corpus” case, it captures the emergency as nothing else: its authoritarian and geographical reach; its inefficiencies; its meanness and occasional magnanimity; its evocations of judicial philosophies and degrees of courage among judges and lawyers.

In this case, the respondent contended that although Article 359(1) of the constitution curtails approaching the Apex Court for the enforcement of fundamental rights it does not curtail the enforcement of common law, natural law, or statutory rights of the persona; liberty in the High Court under Article 226.

The respondent also argued that the powers of the executive do not increase during an emergency as the extent of their power is already clearly and explicitly laid down in the Constitution.

The most important argument of the respondents is that although Article 21 gives the right to life, it is not the only Article that gives it and that the executive taking over the powers of the legislature is against the basic structure of the constitution. If such a thing is allowed, then the motive of the framers of the Constitution would be defeated.

The Supreme Court, in a 4-1 decision, held that during the emergency, citizens had no right to approach the courts to enforce their fundamental rights. The majority opinion held that the President's order suspending the right to move the courts for enforcement of fundamental rights under Article 359(1) was valid. This judgment in the ADM Jabalpur case is one of the most criticized judgments in the history of the Indian Judiciary. The ADM Jabalpur case has become a landmark case and is widely known as the ‘Habeas Corpus Case’. It is said that this case was like a test for the Supreme Court Judges and only one Judge (Justice Khanna) passed the test.

After passing this judgment, since Justice Khanna passed the extremely strong dissenting view, there was a huge uproar throughout the State and he lost his chance of becoming the Chief Justice of India. Justice P.N. Bhagwati later expressed his regret for sliding with the majority view of the Court.

Minerva Mills Ltd. v. Union of India (1980):

Though this judgment came after the emergency period, it has significance concerning the interpretation of the Constitution and its relationship with the Parliament's amending power.

The case stands out as one of the most notable cases in terms of independent India's history. In this decision, the Supreme Court determined the constitutional significance of both the directive Principles of State Policy and Fundamental Rights, guaranteeing a balance between the two. The Supreme Court upheld Article 368 clauses (4) and (5). The 42nd Amendment Act, on the other hand,

served as a vehicle for the exploitation of the basic structure of the constitution, notably sections 4 and 55 of the 42nd Amendment Act. Therefore, it was necessary for the Supreme Court to rule that the clauses were unconstitutional since they violated the basic structure, and the court wanted to stop further exploitation.

This case is crucial because it paved the way for the Indian Constitution to become what it is today. This case not only served to preserve the basic structure of the Indian constitution, but it also established a precedent for similar cases in the future. This important decision also aided in preventing attacks on Fundamental Rights and preserving the harmony between Part III and Part IV of the Indian constitution.

CONCLUSION

“A constitution is framed for ages to come, and is designed to approach immortality as nearly as human institutions can approach it. Its course cannot always be tranquil”.

- Chief Justice John Marshall

During the brief seventy-five years that Indians have held the reins they have governed themselves successfully against awesome odds. The seamless web woven by the Constituent Assembly into the constitution for the nation - establishing the institutions and the spirit of democracy, pursuing a social revolution to better the lot of the masses of the Indians, and preserving and enhancing the country's unity and integrity- is intact, having recovered from the terrible distortion of the emergency. There are several conclusions to be drawn and lessons learned from the Emergency. The defense of Indian democracy seems to have been the main justification of the Emergency. Nevertheless, it cannot be said that it was really in favor of dictatorship or fascism or worked for it, though their actions were full of contradictions and contained contrary possibilities. However, Indian democracy proved resilient enough to survive. But it was a strong warning to the Indian people and the democratic system. The Emergency regime was not yet a full-blooded dictatorship or totalitarian or fascist in character. Nor was it perhaps designed to be so. In the words of Granville Austin, ‘ugly as the Emergency was, New Delhi in 1976 was not Berlin under Hitler.’

The lessons learned from that era and similar situations globally emphasize the critical importance of embedding robust safeguards and checks within the constitutional framework. To uphold the essence of democracy and safeguard citizens' rights during emergencies, it is vital to establish clear boundaries on emergency powers, subjecting them to judicial scrutiny, and ensuring rigorous parliamentary oversight. Additionally, strict adherence to prescribed time limits for emergency declarations will prevent the potential abuse of authority. Drawing from international standards and best practices provides invaluable guidance for formulating emergency provisions that prioritize public welfare. By learning from past errors, we can strike a balance between national security imperatives and democratic principles. In confronting evolving threats and challenges, both the government and the populace bear the responsibility of upholding the integrity of emergency measures while remaining vigilant against their misuse. Public awareness, an independent judiciary, and an engaged civil society are pivotal elements in safeguarding democracy, even in times of crisis. Looking ahead, it is imperative to derive insights from historical experiences and ensure that emergency provisions serve as a necessary means of safeguarding the state, without being wielded as a tool against its citizens. Our collective commitment to the values of liberty, justice, and human rights forms the bedrock upon which a vibrant democracy thrives.

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